

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 IN RE MICHAEL MARCUS,  
12 Petitioner

No. C14-03769 CRB

**ORDER TO SHOW CAUSE**

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14 Petitioner Michael Marcus, who has served a state court sentence and remains on  
15 probation for sexual battery and for annoying or molesting a child under the age of 18 per  
16 California Penal Code Sections 242/243.4(E) and 647.6(A), has filed a petition for a writ of  
17 habeas corpus under 28 U.S.C. § 2254. See generally Petition (dkt. 1). Petitioner argues that  
18 (1) he received ineffective assistance of counsel; (2) his misdemeanor counts violated the  
19 statute of limitations; (3) his counsel fraudulently induced him to waive his right to a jury  
20 trial; (4) his probation condition violates his constitutional rights; (5) the requirement that he  
21 register as a sex offender violates the Equal Protection Clause; and (6) the illegal touching by  
22 the complaining witnesses was ambiguous. Id. at 19-58.

23 A court may entertain a petition for a writ of habeas corpus “in behalf of a person in  
24 custody pursuant to the judgment of a State court only on the ground that he is in custody in  
25 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).  
26 A petitioner who is on probation at the time of filing is considered in custody. See Chaker v.  
27 Crogan, 428 F.3d 1215, 1219 (9th Cir. 2005); cf. United States v. Span, 75 F.3d 1383, 1386  
28 n.5 (9th Cir. 1996) (probation establishes custody for purposes of 28 U.S.C. § 2255) . A court

1 shall "award the writ or issue an order directing the respondent to show cause why the writ  
2 should not be granted, unless it appears from the application that the applicant or person  
3 detained is not entitled thereto." 28 U.S.C. § 2243.

4 The Court has reviewed the petition and finds good cause to proceed. Accordingly,

5 1. The Clerk of the Court shall serve by certified mail a copy of this Order  
6 and the petition and all attachments thereto upon the Attorney General of the State of  
7 California. The Clerk shall also serve a copy of this Order on the Petitioner's counsel.

8 2. Respondents shall file with this Court and serve upon the Petitioner,  
9 within sixty (60) days of the issuance of this Order, an answer conforming in all respects to  
10 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas  
11 corpus should not be issued. Respondents shall file with the answer a copy of all portions of  
12 the state trial and appellate record that have been transcribed previously and that are relevant  
13 to a determination of the issues presented by the petition.

14 3. If the Petitioner wishes to respond to the answer, he shall do so by filing  
15 a traverse with the Court and serving it upon the Respondents within thirty (30) days of his  
16 receipt of the answer.

17 **IT IS SO ORDERED.**

18 Dated: November 3, 2014

  
CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

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